

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ MAC APP No. 678/2007

Judgment delivered on: February 21, 2008

Shri J.N. Sharma Appellant.
Through: Mr. A.K. Aggarwal, Advocate
versus

National Insurance Co. Ltd. Respondents
Through: Ms. Manjusha Wadhwa, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

KAILASH GAMBHIR, J. Oral:

+CM. No. 16401/2007 in MAC APP. No.678/2007

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By way of the present application, the appellant seeks condonation of delay of 871 days in filing the appeal. The

appellant in the present application states that he did not appear in the matter under the bona fide impression that the insurance company alone is liable to pay the compensation amount as the vehicle involved in the accident was duly insured with the insurance company. The appellant has further averred that it is only when he received recovery notice from the Collector, the said fact of ex-parte award against him came to his knowledge. After having come to know about the said ex-parte award the appellant took necessary steps for obtaining certified copy of the order and thereafter he preferred the present appeal. The appellant is an ex-serviceman. The application is duly supported by his affidavit. Counsel for respondent insurance company opposes the present application on the ground that no sufficient explanation has been given by the appellant for seeking condonation for such a long delay.

I have heard learned counsel for the parties.

The appellant has not explained each day delay in preferring the present appeal. However, the Apex Court in catena of judgments has held that rigour of Limitation Act and other technicalities can be avoided while trying motor accident claim cases.

At this stage, counsel for the appellant states that the appellant is prepared to deposit some amount out of the award amount. Considering the fact that the appellant is an ex-serviceman and is prepared to deposit some amount with the Tribunal so as to secure rights of the insurance company in the event of the appellant not ultimately succeeding to establish his case, I feel in the interest of justice, this application needs to be allowed.

In the light of the above discussion, delay is condoned. Application is allowed.

MAC APP. No. 678/2007

In the present appeal challenge has been made against the impugned award on the ground that the driver of the offending vehicle was holding valid driving licence on the relevant date of the accident. Counsel for the appellant has invited my attention to the photo copy of the driving licence placed on record at page no.58 of the paper book. Counsel for the appellant has also invited my attention to the information given by the Transport Department vide letter dated 2.10.2007 which shows that the licence in favour of the appellant for HTV was issued on 20.5.93.

Ms. Manjusha Wadhwa, counsel for the respondent insurance company strongly refutes the said submission made by the counsel for the appellant. Ms. Wadhwa states that the documents now being relied upon by the appellant can be rejected straightway as before the Tribunal the respondent insurance company has summoned the witness from the Mall Road Transport Authority and the witness from the said authority in his deposition has clearly stated that the licence which was taken into possession by the police was issued in the name of one Shri K. Sharma, son of Shri P.N. Sharma, who was authorised to drive only LMV plus motor cycle. The contention of the counsel for the respondent is that now entirely a different licence is being relied upon by the appellant.

Be that as it may, without expressing any opinion on the merits of the case, I feel the present appeal is required to be remitted back to the Tribunal so that the Tribunal can go into the issue of validity, authenticity and genuineness of the licence as sought to be placed by the appellant at the appellate stage.

The Tribunal has awarded compensation of Rs.5,77,000/-along with interest @ 9% p.a.from the date of filing

of the petition till realisation, excluding the interest for a period of two years. Counsel for the respondent states that said amount has already been released in favour of the claimants after the said amount was deposited by the insurance company and the insurance company has already filed execution against the owner of the offending vehicle i.e., appellant herein to recover the award amount. To secure the interest of the insurance company let amount of Rs.3 lacs be deposited by the appellant with the Tribunal. The said amount of Rs.3 lacs to be deposited by the appellant shall be kept in a fixed deposit for a period of one year. It is expected that the Tribunal shall dispose of the matter within a period of one year. In the event of the matter being not decided within a period of one year, necessary directions for the renewal of the FDR shall be passed by the Tribunal.

With these directions, the present appeal is remitted back to the Tribunal. In view of the matter being remitted back to the Tribunal, the impugned order is set aside against the appellant, owner of the offending vehicle. The appellant shall be entitled to place on record before the Tribunal the documents now filed by the appellant in the appeal and there shall not be any necessity of directing notice on the claimants so as to avoid

any sort of delay in the matter. The respondent shall not initiate recovery proceedings against the owner of the offending vehicle till the final decision of the matter by the Tribunal.

The parties are directed to appear before the Tribunal on 5.3.2008.

February 21, 2008
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KAILASH GAMBHIR, J